PUBLIC PROSECUTOR v. BOO CHEW HIA

[A. Cr. J. (Ali J.) November 14, 1962]

[Muar — Criminal Appeal No. 31 of 1962]

Criminal Procedure — Witness — Recall of — Criminal Procedure Code (Cap. 6), ss.35 and 425.

A witness may be recalled whenever it is essential to the just decision of the case. Merely recalling a witness is not in itself an irregularity. In this case as the trial Magistrate had exercised his powers under section 425 of the Criminal Procedure Code in permitting a witness to be recalled, there was nothing irregular about it, and the acquittal of the accused on that ground was wrong in law. The appeal must therefore be allowed, the order of acquittal set aside and the case must be retried before another Magistrate.

MAGISTRATE'S CRIMINAL APPEAL.

Syed Agil Barakbah (Deputy Public Prosecutor) for the appellant.

R. Ramason for the respondent.

Ali J.: This is an appeal by the Public Prosecutor against the decision of the Magistrate at Batu Pahat whereby the respondent, who was charged with an offence under section 4(1)(c) of the Common Gaming Houses Ordinance, 1953, was acquitted and discharged without his defence being called.

The events in the course of the proceedings which led to the acquittal of the respondent were somewhat peculiar. The trial Magistrate having considered that it was necessary for a list of exhibits required to be prepared under section 34 of the Criminal Procedure Code to be produced allowed a prosecution witness to be recalled to give evidence of the list. Soon after this at the request of the respondent, who indicated that he wished to consult a lawyer, the trial Magistrate adjourned the case to the 28th of August, 1962, for continued hearing. When the case came up again before him the trial Magistrate acquitted the respondent holding, *inter alia*, that it was highly irregular for the witness to have been recalled. This, in my view, was surprising because before granting leave to recall a witness, the trial Magistrate must have considered whether by granting the leave the respondent would be prejudiced in his defence. The trial Magistrate was in effect exercising his power under section 425 of the Criminal Procedure Code and the irregularity or otherwise of the course which he adopts must be first considered before exercising that power. However, it was apparent that during the adjournment the trial Magistrate's attention was drawn to the decision of Murray-Aynsley C.J. which was discussed on page 598 of *Mallal's* Criminal Procedure, 4th edn. This decision seemed to have influenced the trial Magistrate into making the decision as he did. I need only say that the circumstances of the case before Murray-Aynsley C.J. were in no way similar to those in the present case. In the case under review the defence had not even commenced and as the respondent was not at the time represented there was no question of counsel having made any address. The law permits a witness to be recalled whenever it is essential to the just decision of the case. Merely recalling a witness is not in itself an irregularity. In the present case it could not have been an irregularity as far as the trial Magistrate was concerned as he had himself thought it necessary to exercise his power under section 425 of the Criminal Procedure Code. For the purpose of this appeal it is sufficient for me to say that the trial Magistrate was acting regularly when he allowed the witness to be recalled and the acquittal was therefore not a just decision of the case.

This appeal is, therefore, allowed, the order of acquittal set aside and the case be sent back for retrial before a different Magistrate.

Appeal allowed.

BALWANT SINGH v. TONG LAM & CO.

[O. C. J. (Rose C.J.) November 20, 1962]

[Singapore — Suit No. 1568 of 1961]

Landlord and Tenant — Subletting before 1949 — Condition against subletting agreed to by tenant in 1954 — Existing sub-tenants not affected — Rent receipts in English not conclusive against tenant knowing no English.

A tenant is not in breach of a condition against subletting when it has taken effect prior to his agreeing to that term.

ACTION.

J. Grimberg for the plaintiff.

H. E. Cashin for the defendants.

Rose C.J.: The plaintiff claims possession of certain premises from the defendants on the ground that in breach of their tenancy agreement they sublet part of the premises to three separate parties, namely, Lim Bock Seong, Tan Sue Eng and Ng Huat.

The plaintiff acquired in 1947 the premises in question, No. 629 North Bridge Road, together with Nos. 631, 633 and 635, the last named being a cinema and, apparently, the most important of the properties concerned. The acquisition in 1947 was a joint one between the plaintiff and his three brothers. By a family arrangement in 1951 the property vested in the plaintiff and his late brother, one Hira Singh. Now the plaintiff is the sole owner.

It is common ground between the parties that late in December 1948 or in January 1949 the present defendants became the tenants of No. 629 North Bridge Road, with the consent of the plaintiff and his brothers.

The plaintiff's position is that as early as 1949 there was a prohibition against subletting, which was signified by a note to that effect printed at the top of the form of receipt issued by Messrs. Gian Singh and Company, of whom the Singh brothers were the partners, from January 1949 onwards.

Moreover, the plaintiff says that in 1954 a notice to quit was issued (dated the 29th September, 1954) with a view to the plaintiff obtaining an increase in rent. He contends that there was some discussion as to the amount, which was finally settled at $127.50, the small reduction being in consideration of an undertaking by the defendant not to sublet.

Be that as it may, the defendant called evidence to show that the sub-tenants in question had been there prior to the defendant company taking over the tenancy.

Mr. Hardial Singh, the eldest of the Singh brothers and the man who was in charge of the negotiations at the end of 1948 and beginning of 1949, gave his evidence very fairly and did not seriously contend that he made any profound investigation into the question of whether or not there were existing sub-tenants at that time. The omission of any such inquiry, was, in my opinion, natural enough in view of the fact that No. 629 North Bridge Road was part of a package deal, to which I have already referred. Even had Mr. Hardial Singh been apprised of the fact that there were sub-tenants in possession, it would seem that there is little he could have done about it.

The three sub-tenants in question gave evidence as also did Mr. Tan Cheng Kiat, the proprietor of the defendant firm. Their evidence, properly enough, was not seriously disputed on the main issue and I have no hesitation in finding that the three persons in question were in possession as sub-tenants since at any rate 1948, one of them at least having been there even longer than that.

Even if, which I am not prepared to concede, the defendants gave any undertaking as to subletting, such an undertaking would surely not apply to the three existing sub-tenants. Apart from that, I am not satisfied that any such undertaking was given or can reasonably be implied from the documents of the case. The fact that the form of receipts contained a prohibition does not seem to me to be conclusive having regard to the proprietor's lack of knowledge of the English language, and, in particular, to the fact that no subletting took place after the first of such receipts was issued in January 1949. Nor am I satisfied that the reduction of rent from $141 to $127.50, which took place in 1954, had any relation to the question of sub-tenants, in that any undertaking that the defendants might have given on this head could not have affected the existing sub-tenants and would therefore have been of little practical value.

For these reasons I am of opinion that the plaintiff's action fails and must be dismissed with costs.

Claim dismissed.

Solicitors: *Drew & Napier; Rodyk & Davidson.*

PUBLIC PROSECUTOR v. TEOH CHOON TECK

[A. Cr. J. (Hepworth J.) November 23, 1962]

[Penang — Criminal Appeal No. 19 of 1962]

Criminal Law — Forgery — Penal Code, s.465.

Criminal Procedure — Charge of forgery documents in possession of prosecution — Production of — Whether defence entitled to copies thereof — Criminal Procedure Code (Cap. 21), ss.59, 162, 163, 164 and 182(b).

The accused was charged in the Magistrate's Court at Penang with two charges of forgery under section 465 of the Penal Code, in one of which the document he was alleged to have forged was a letter and in other charge he was alleged to have made a false endorsement on a cheque. It was the defence case that both the signature on the letter and the endorsement on the cheque were those of the complainant. Prior to the accused being charged the police had searched his house and taken away a number of documents, among which was the letter referred to in the first charge. After the accused had been charged in court his counsel asked to be allowed to inspect the documents seized by the police and take copies of them. This request was opposed by the prosecution. In the end the Magistrate made an order that since the documents belonged to the accused, he was entitled to photostat copies of them, but was not entitled to the originals. The Deputy Public Prosecutor thereupon filed an appeal against this order of the Magistrate.

Held: (1) in criminal trials before a Sessions or Magistrates' Court, apart from the provisions of sections 59 and 182(*l*) of the Criminal Procedure Code, there is no power for the President or the Magistrate to order the prosecution to produce the documents relevant to the case;

(2) as the documents were specifically referred to in the charges and as it was essential for the accused to have the originals or photostat copies in order for him properly to prepare his defence, which could not otherwise be prepared, the Public Prosecutor in order to ensure that justice was not only done but seen to be done should not have raised objections, on the particular facts of this case, to the defence being supplied with photostat copies of the letter and the cheque and also any other documents removed from his possession which he required for the furtherance of this defence.

Cases referred to:—

(1) *Lim Beh & Ors.* v. *Opium Farmer* (1842), 3 Ky. 10.

(2) *Sathaiah* v. *R.* [1938] M.L.J. 30.

MAGISTRATE'S CRIMINAL APPEAL.

Wan Sulaiman bin Pawan Teh (Deputy Public Prosecutor) for the appellant.

Jag-Jit Singh as *amicus curiae.*

Cur. Adv. Vult.

Hepworth J.: In this case the accused was charged in the Magistrate's Court, Penang, with two charges of forgery under section 465 of the Penal Code, offences within the criminal jurisdiction of such Court, in one of which the document he was alleged to have forged was specified as "a letter dated 13.1.62 written by you to the R.A.F. Accounting Officer, Butterworth" and in the other of which as "cheque No. B. 008024 by making a false endorsement on the back".

Prior to the accused being charged the police had searched his house and taken away a number of documents, among which was the letter referred to in the 1st charge.

After the accused had been charged in Court his counsel asked to be allowed to inspect the documents seized by the police and take copies of them. This request was opposed by the prosecution. In the end the Magistrate made an order that since the documents belonged to